

## MEMORANDUM OF OPPOSITION/RECOMMENDATION

### Statutory Restriction on Nursing Time

**BILL NUMBER:** A.1898 (GUNTHER), S.6342, S.6362 (MORAHAN)  
**TO:** MEMBERS, NEW YORK STATE LEGISLATURE  
**DATE:** June 19, 2007

---

The Home Care Association of New York State, Inc. (HCA) is compelled to oppose legislation A.1898, S.6342, and S.6362 which would create explicit statutory limitations on the working schedules for nurses in an array of employer settings, including home care. While HCA applauds and supports the sponsors' goals of promoting quality of care and the overall working environment for nurses, the proposed legislation is geared to facility-based settings and is thus incompatible with the provision of care in the home. The dynamic nature of the health care environment and the practice of nursing as it relates to the provision of care in the home are inherently distinct from facility settings. **HCA recommends that home care be excluded from this bill.**

The bill defines "Health care employer" to mean any individual, partnership, association, corporation, limited liability company or any person or group of persons acting directly or indirectly on behalf of or in the interest of the employer, which provides health care services in a facility licensed or operated pursuant to article twenty-eight or thirty-six of the public health law, the mental hygiene law, the education law or the correction law, including any facility operated by the state, a political subdivision or a public corporation as defined by section sixty-six of the general construction law.

Clearly, the bill is both drafted and directed from the frame of reference of "facility-based care;" this is plainly evidenced throughout its definition of health care employers as "facilities" (see above). It is imperative that home care be excluded, as it is a service rendered in the home, not in a facility. The duties and circumstances involved in the provision of home care are distinct from facility-based care, and warrant the exclusion of this form of care from this legislation.

The home health nurses' work schedule, environment, client and administrative caseload are unique and differ substantially from that of nurses in a hospital or nursing home setting. Nurses in home care function with autonomy and flexibility, balancing their roles as clinician and administrator. Their total daily and weekly hours are not easily predicted or scheduled and can vary depending on the particular patient's health care needs.

Home care nursing is largely based on visits, not hours, the time for which fluctuates with the required procedures, the patient's needs and the situations which the nurse encounters upon her

visit. Home care nurses also spend large amounts of time in case management and supervision activities, which are dynamic activities which also greatly fluctuate situationally. Case management bridges and connects vital services for the patient and enables the care plan to operate successfully. The activities involved, the environments in which they are performed and other aspects of the home care professionals' duties and working environment make this field distinct from the environment in hospitals and other facilities. The limitations sought by the bill are not readily translatable to the home care environment and would create very negative effects for patient access and care at home.

Consider the incompatibility that emerges in the portion of the bill which provides for the professional misconduct amendments, allowing a nurse to discontinue service and be insulated from patient abandonment or neglect: when a nurse leaves a facility, the patient is still in a "patient care environment," but, when staff leaves a home care patient, the staff that is leaving *is* the care itself. This is a vital distinction between care settings, and doubtfully contemplated by the bill.

Broader issues to consider are the nursing shortage, the hospital discharge-to-home process and the State's overall goal of promoting patient care in the home. This bill would exacerbate the effects of an already serious and growing shortage of nurses, which is particularly problematic in home care – and, especially for those medically complex patients so heavily dependent upon nursing care and management. It would also pose barriers to the discharge of hospital patients to home care, which in most circumstances, requires ready and timely access to nursing personnel in order to avoid delays. In addition, the State's broader policy of emphasizing care at home requires flexibility in home care operations and in the deployment of home care personnel.

The bill is clearly predicated on a facility-based environment, and even with the sincere attempts in providing exemptions, does not accommodate the varied and fluid nature of the patient care context, nor of the different circumstances across health care settings.

Ultimately, HCA joins with other health care provider associations to express its serious concerns with the overall approach taken in this legislation, which seeks to insert statutory limitations in a field of practice that by its very nature is both dynamic and ever-challenged in its mission to provide effective, individualized patient care. Since the provisions of this bill are particularly incompatible with the provision of home care itself, **HCA respectfully requests that, minimally, the sponsors amend this legislation to omit references to Article 36 of the Public Health Law (home health care agencies).**

HCA appreciates the sponsors' and the Legislature's consideration of these serious concerns and recommendations.